IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 1745 OF 1980

Tata Engineering &
Locomotive Co. Ltd., .. Plaintiffs.

vs.

M/s. Sarangpur Transport
Co. and Anr. .. Defendants.

Mr. M.L. Palan i/by N.H. Nathani
for the plaintiffs.

Ms. Pooja Jain i/by Mulla & Mulla
for Defendants.

CORAM : S.U.KAMDAR, J.

DATE : 6th July, 2005.

P.C.

. The present suit has been filed by the plaintiffs for recovery of a sum of Rs. 72,311/- with interest on the principal amount of Rs. 63,677/- at the rate of 18% per annum from the date of the suit till payment and/or realisation and Rs.1,15,595/- towards damages along with interest at the rate of 18% per annum. Some of the material

facts of the present case are as under :-

2. On 1.9.1976 an agreement was executed between the plaintiff as the owner of the vehicle and Defendant no. 1 company for purchase of motor vehicle bearing Registration No. GTT - 4010 on the higher purchase basis. The 2nd defendant executed a guarantee in respect thereof. On execution of the said agreement, the defendant no. 1 made payment of the sum of Rs. 15,371.92 as and by way of initial payment for the purchase of the said motor vehicle and agreed to make balance payment in instalments which will become due from time to time as provided in the said agreement. It is the case of the plaintiff that the defendant no. 1 was irregular in making payment of instalment amount and accordingly a notice was issued by the plaintiffs to the defendant no. 1 on 13.9.1977 seeking payment of the entire balance amount then due and outstanding. According to the plaintiffs, as on the date of the notice, an outstanding which is payable with interest for delay in payment was a sum of Rs. 29,096/- The plaintiff also issued a notice to the 2nd defendant as guarantor to pay to the plaintiff a sum of Rs. 29,096 being eight monthly instalments then overdue. The plaintiffs say that in spite of the said notice the defendant neither made the payment of the said amount nor paid the instalments on due dates. In fact two cheques given by the

defendant no. 1 were dishonoured. In the aforesaid circumstances, the plaintiffs have filed the present suit for the recovery of the aforesaid principal amount of Rs. 63,677/- with interest at the rate of 18% as on the date of the suit amounting to Rs. 72,311/-. The plaintiffs thereafter took over the possession of the said vehicle and sold the same and has received the sale proceeds of Rs. 91,000/- after deducting the expenses of the said sale the plaintiff has got Rs. 90,000/- towards sale proceeds. The plaintiff has also claimed Rs. 1,15,595/- as damages inter alia on the basis that the plaintiff is entitled to the entire amount covered under the said agreement which was an amount of unpaid instalments for the entire duration.

3. From the aforesaid narration, the following admitted facts emerges.

4. The total amount covered under the said hire purchase agreement for the vehicle was sum of Rs. 1,42,672-92. The sum of Rs. 15,371-92 has already been paid by the defendant to the plaintiff at the time of execution of the said agreement. Thereafter the defendant has made further payment of three instalments as mentioned in Exhibit "I" to the plaint totally amounting to Rs. 11,706/- Thus, under the agreement the defendant has paid total amount of Rs. 15,371-92 + Rs. 11,706/-. Thus, if

the entire agreement is to be worked out, the total amount liable to be paid by the defendant to the plaintiffs was Rs.1,42,672.92 and after giving credit of the amount paid, the balance amount due and payable by the defendant to the plaintiffs is 1,15,595/-. It is an admitted position before me that under the said agreement the defendant has sold the said vehicle and the sale proceeds thereafter is thus required to be set off against the claim of Rs. 1,15,595/-. The said sale proceeds as admitted by the plaintiffs is Rs. 90,464/-. Thus, the balance amount payable under the agreement by the defendants to the plaintiffs is in my opinion only of Rs. 25,131/-. However, the plaintiffs in the present suit are claiming by prayer clause (a) am amount of Rs. 72,311/- and by way of prayer (b) an amount of Rs. 1,15,595/- as damages. I am unable to accept the contention of the plaintiffs that the plaintiffs are entitled to the aforesaid two amounts. The total price of the vehicle under the agreement is admittedly only Rs. 1,42,672-92. Whereas by virtue of prayers (a) and (b) the plaintiff is seeking not only the amount which is much larger than the total amount of the agreement itself but the plaintiffs are not even giving credit for the amount recovered by them by sale of the said vehicle of Rs. 90,464/-. Confronted by the aforesaid position, the learned counsel for the plaintiffs has stated that the plaintiffs does not press for prayer (b) of the

suit. However, he continues to press prayer (a) of the suit which is for the sum of Rs. 72,311/- with interest on the sum of Rs. 63,677-00 at the rate of 18% per cent per annum from the date of the suit till payment and/or realisation and is not willing to give credit for the amount recovered by sale of the said vehicles which comes to Rs. 90,464/-. The learned counsel for the plaintiffs says that he is not bound to give credit for the aforesaid amount of Rs.90,464/- because the motor vehicle belongs to the plaintiffs as the owners and thus the plaintiffs are entitled to the sale proceeds thereof and defendants are not entitled to adjustment of the same. He has drawn my attention to clause 4 of the said agreement which reads as under :-

> CLAUSE VI:- If the Hirer, shall duly perform and observe all the terms and conditions in this Agreement contained and on his part to be performed and observe and shall in manner aforesaid pay to the Owners monthly sums by way of rent amounting together with the said sum of Rs. 15,371.92 (*A) so paid on the execution of this Agreement as aforesaid, to the sum of Rs.1,42,672.92 (*B) and shall also pay to the Owners all other sums of money which may become payable to them by the Hirer under this Agreement, the hiring shall come to an end and the vehicle shall

> at the option of the Hirer become his property and the Owners will make over all their right, title and interest in the same to the Hirer, but until such payments as aforesaid have been made and until the Owners make over all their right, title and interest to the Hirer, the vehicle shall remain the absolute property of the Owners."

By relying upon the said clause 4 of the said agreement, the learned counsel for the plaintiffs has contended that in view of the fact that till and until the entire instalments are paid the plaintiffs continue to be the owners in respect of the said goods. Thus, the plaintiffs are entitled to the sale proceeds of the same and no credit can be given to the defendants. Firstly, the said argument is not acceptable because it is an admitted position that three instalments are paid out of the total cost of the hire purchase of Rs. 1,42,672-92. Whereas by the sale proceeds of the said vehicle a sum of Rs. 90,464/- is realised by the plaintiffs. In addition thereto the defendants have paid to the plaintiffs Rs. 27,077/-. Over and above the aforesaid amount now the plaintiff seek a decree in the sum of Rs. 72,311/- in the present prayer (a). In so far as the first contention pertaining to the ownership of the vehicle is concerned, it will not be out of place to point out the judgment of the

Apex Court in the case of Sundaram Finance Ltd., vs. The State of Kerala and another reported in AIR 1966 SC 1178 in which it has been held as under :-

> If the real transaction is a loan of money secured by a right of seizure of the goods, the property ostensibly passes under the documents embodying the transaction, but subject to the terms agreement, which become part of the buyer's title, and confer a licence to seize. When a person desiring to purchase goods and not having sufficient money on hand borrows the amount needed from a third person and pays it over to the vendor, the transaction between the customer and the lender will unquestionably be a loan transaction."

Apart therefrom, in my opinion, to pass a decree in favour of the plaintiff for the so called claim for damages is unjust and totally contrary to the well settled principles of damages which require plaintiffs to prove the damages suffered by them. The claim though labelled as damages is in effect the claim for the balance of the instalment amount. The plaintiffs, in my opinion, are not entitled to more than the amount they would have received if the transaction as contemplated under the agreement would have been completed. Even if a decree is

passed in terms of prayer clause (a) of the suit still the plaintiffs are claiming an amount which they would have received if the agreement would have been fulfilled by the defendant. In view thereof, I pass the following decree.

> That there shall be a decree in favour of the plaintiffs and against the defendants for the sum of Rs. 25,131/- being the balance amount payable under the said agreement after giving set off in respect of the sale proceeds of the said vehicle. The plaintiffs will also be entitled to interest at the rate of 18% per annum from the date of the sale of the said vehicle till payment and/or realisation.